Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions for Protection from Whipsawing on the U.S.-Philippines Route	)	IB Docket No. **03-38**
	)	

REPLY OF WORLDCOM

WorldCom, Inc. ("WorldCom") hereby submits this Reply to the Oppositions filed by the Philippine Long Distance Telephone Company ("PLDT") and Globe Telecom ("Globe") in the above-referenced proceeding. PLDT and Globe oppose the Petitions filed by WorldCom and AT&T requesting that the Commission take action to prevent whipsawing on the U.S.-Philippines route. As WorldCom and AT&T explain in their separate Petitions, PLDT and other Filipino carriers have blocked the traffic of WorldCom and AT&T terminating in the Philippines.[1]

As set forth herein, PLDT and Globe have not raised any new relevant issues in their Oppositions. Indeed, their Oppositions reflect a fundamental misunderstanding of the Commission's public interest mandates and policies. The simple fact remains that PLDT is blocking the traffic of two **U.S.** carriers, while not blocking other U.S. carriers, in an attempt to unilaterally increase its international settlement rates in the Philippines. The Commission should

[1] See Public Notice, DA 03-390, IB Docket No. 03-38 (Feb. 10,2003). In an Ex *Parte* letter tiled on February 21, 2003, WorldCom informed the Commission that Smart Telecommunications had begun blocking WorldCom's traffic terminating on Smart's network in the Philippines. On February 21,2003, Smart resumed accepting WorldCom's

international services. Commission stated that, "allowing ISR would promote the public interest in increased competition and reduced prices for international telecommunications services."[5] The Commission recognized, however, that ISR could present competitive concerns in the U.S. market by encouraging "one-way bypass," which the Commission describes as "any practice by which a foreign carrier terminates U.S.-inbound traffic at low rates and exercises its market power to require that U.S. carriers pay much higher rates to terminate traffic in the foreign market."[6] Similarly, the Commission indicates that removal of the **ISP** is warranted only where there is a competitive market on the foreign end, reasoning that in such situations "the foreign carrier lacks [the] ability unilaterally to set the terms and conditions for the termination of international traffic."[7]

Contrary to PLDT's assertion that the Commission's policies against whipsawing are unenforceable on non-ISP routes, however, the Commission's policy in fact is that even on such routes it might need to intervene to prevent competitive distortion in the U.S. international services market. Thus, the Commission explicitly recognized that, "in certain unusual circumstances a foreign carrier ... might possess some ability unilaterally to set rates for terminating U.S. traffic due to ... collusive behavior in the foreign market. In such cases, the Commission may be required to take appropriate remedial action."[8] This is precisely the

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[5] ***Regulation of International Accounting Rates,*** Phase II, *1* FCC Rcd *559,* at 560, ¶ 8 (1 *991).*

[6] *1998* ***Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements,*** 14 FCC Rcd *7963,* at 7968, ¶ 13 *(1999)* (*"ISP Reform Order").*

[7] ***Id.*** at *1911,722.*

[8] ***Id.*** at 7973, ¶ *30.*

situation that U.S. carriers are faced with by their Philippines correspondents. Moreover, the Commission has "reserv[ed] the right to take appropriate action to remedy the situation" where a U.S. carrier that is affiliated with a foreign carrier that possesses market power in the foreign market enters into an arrangement that may present a "significant adverse impact on competition."[9]

Taken to its logical conclusion, PLDT is arguing that the Commission has no ability to intervene on routes where it has authorized ISR or removed the ISP, even in the face of collusive behavior and abuse of market power on the foreign end that harms competition and U.S. carriers and consumers. This assertion clearly is wrong, as the Commission never eliminated its obligation to act to protect the public interest. The Commission should dismiss PLDT's assertion out of hand.

B. The *Telintar Order* provides support for the relief that WorldCom has requested

PLDT further asserts that the *Telintar Order*[10] cited in the WorldCom and AT&T Petitions does not support the granting of the relief sought because it is not analogous to the instant situation." First, PLDT tries to differentiate that decision by claiming that Telintar was a monopoly while PLDT is not. This argument is irrelevant. The Commission has never

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[9] *Id.* at 7990, ¶ 72. PLDT US' arrangement to terminate traffic with its affiliate PLDT – an arrangement denied to WorldCom and AT&T -- obviously violates this rule. The Commission should take action against PLDT US to remedy the situation.

[10] *Proposed Extension of Accounting Rate Agreement for Switched Voice Service to Argentina,* 14 FCC Rcd 8306 (1999) ("Telintar Order").

[11] PLDT Opposition at 19

concluded that it would act to prevent whipsawing by monopoly carriers but not by carriers that are not pure monopolies but that have market power. To the contrary, the Commission has long recognized the "need to ensure that foreign carriers do not abuse their market power in negotiations with U.S. carriers," not just those carriers with monopoly power.[12]

Nor are the other fact differences highlighted by PLDT -- that the rates in question in the ***Telintar Order*** were above the benchmark rates, that AT&T had an existing and interim agreement with Telintar, and that AT&T was demanding a rate decrease rather than resisting an increase – relevant. In fact, the Commission's sole concern was the fact that Telintar had blocked one U.S. carrier's circuits as a result of that carrier's attempts to more aggressively negotiate than other U.S. carriers. Thus the Commission concluded that "Telintar's ***actions to disrupt US. international service*** and to continue such disruption" (emphasis added) alone warranted the Commission's order to suspend settlement payments to Telintar.[13] **As** AT&T noted in its Petition, there is simply no difference between retaliatory action taken in response to an attempt to negotiate a lower rate, as was the action of Telintar, and retaliatory action taken in response to a refusal to accept a rate increase, as PLDT and other Philippines carriers have undertaken here.[14] Indeed, the Commission acknowledged that blocking of circuits by Philippines carriers would amount to whipsawing in its January 31st letter to the NTC.[15]

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[12] *Policy* ***Statement*** *on* ***International Accounting Rate Reform,*** 11 FCC Rcd **3146,** at 3149, ¶ 19 (1996).

[13] *Telintar* ***Order,*** at 8314, ¶ 11

[14] See AT&T Petition at 8

[15] See Letter from Donald Abelson, Chief, International Bureau, FCC to Hon. Ami Jane Borje, Commissioner, National Telecommunications Commission, January 31, ***2003*** (stating that the "FCC has previously deemed the disruption of select U.S. carrier networks in the course of rate negotiations to be 'whipsawing'....")

Put simply, through abuse of its market power, PLDT has retaliated against WorldCom for its refusal to agree to a unilateral settlement rate increase. This discriminatory and retaliatory behavior is classic whipsawing, nearly identical to the actions taken by Telintar, and must be addressed by the Commission.

II. THE COMMISSION SHOULD APPLY U.S. LAW AND REGULATION TO PREVENT WHIPSAWING

PLDT and Globe both argue that the Commission should give deference to the Philippine administration – applying the principle of international comity – to allow PLDT and other Philippines carriers to disrupt service on the US.-Philippines route.[16] The Commission, however, is not being asked to interfere with the NTC's decisions. Rather, the Commission must address a clear violation of U.S. law. In upholding the ***Benchmarks Order,*** the U.S. Court of Appeals for the D.C. Circuit stated that the Commission may lawfully exercise its statutory authority to regulate U.S. carriers' provision of international services, even if such regulation has extraterritorial consequences.[17]

Moreover, the Commission has made clear that it will exercise international comity only in exceptional circumstances where certain foreign governments that had explicitly prohibited callback faced unusual difficulties in enforcing its domestic laws and regulations.[18] Thus, the Commission rejected a request for international comity by a foreign carrier that argued that

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[16] PLDT Opposition at *22-23*. **Globe** Opposition at **10-12**.

[17] ***Cable & Wireless v. FCC,*** **166** F.3d **1224, 1229-30** (D.C. Cir. **1999).**

[18] **See *Petition of AT&T Corp. and MCI WorldCom, Inc. For Declaratory Ruling Regarding Alternative Accounting Rate Arrangements for Service between the United States and Mexico,*** 14 FCC Rcd **6358, at 6361-62, ¶ 7 (1999), *citing VIA USA Order,*** 10 FCC Rcd **9549 (1995).**

granting of an alternative settlement rate arrangement in the United States would conflict with the regulations of its home market. The Commission concluded in that decision that by approving the alternative settlement arrangements, "we are finding **solely** that the petitions comply with Commission regulations … and that Commission approval … would not be condoning" efforts to circumvent foreign laws.'' **The** Commission now must act to enforce U.S. law and regulation, regardless of the limited practical effect such action might have on the Philippines.[20] In sum, international comity is neither necessary nor appropriate in this circumstance.

III. THE COMMISSION MUST RESPOND TO WHIPSAWING EVEN WHERE SETTLEMENT RATES ARE BELOW BENCHMARK LEVELS

PLDT argues that the Commission does not have the authority or jurisdiction to intervene here because settlement rates have decreased on the U.S.-Philippines route to levels that ***are*** below that set forth in the Commission's ***Benchmark Order."*** PLDT's claim is not only irrelevant, but is wrong.

First, WorldCom has requested that the Commission address PLDT's drastic and

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[19] ***Id.***

[20] WorldCom notes that the assertions by PLDT and Globe that the NTC has approved their unilateral settlement rate increases are incorrect. In its February **7"** Order, the NTC simply refers to the Commission's Benchmark and ITU rates, but does not explicitly approve the proposed settlement rates. In fact, PLDT admits that the international "termination rates are not mandated by the Honorable Commission or any other Philippine governmental agency." See PLDT Opposition, Exhibit 11 at 1. Nor is it clear that any action taken by the Commission would he inconsistent with any NTC action, including the NTC's February **7"** Order which requires Filipino carriers to "keep[] open your communications circuits to promote the PUBLIC SERVICE AND NATIONAL WELFARE." See Memorandum Order, NTC, February **7,2003.**

[21] PLDT Opposition, at **12-13.**

discriminatory decision to block WorldCom's traffic. PLDT, however, is in effect arguing that it should be free to blatantly whipsaw selected **U.S.** carriers without response from the Commission simply because settlement rates in the Philippines have moved below Benchmark levels. Surely the Commission would not agree. PLDT's attempt to shift the Commission's focus from its blocking of traffic to the appropriate decreases in its settlement rates over the past few years should be dismissed.

Second, PLDT ignores the Commission's repeated and longstanding statements that its goal is cost-oriented international termination rates.[22] Indeed, when it adopted the *Benchmarks Order,* the Commission clearly intended the benchmark rates to represent a ceiling for settlement rates, and not an indication of the actual cost of terminating international traffic. Thus the Commission has repeatedly recognized that the benchmark rates are considerably above actual cost-based levels.[23] PLDT's assertion, therefore, that the Commission never has authority or jurisdiction to intervene where settlement rates are below Benchmark levels is obviously wrong.

Third, PLDT and Globe do not demonstrate that their unilateral 50 percent settlement rate increase demands are cost-justified. Instead, PLDT merely states that it has a "need to increase revenues" because volume increases promised by AT&T and WorldCom did not materially

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[22] **See, e.g., Benchmarks Order, 12 FCC Rcd 19,806, at 19, 855, n.176 ("We reiterate that** our **goal is ultimately to achieve settlement rates that are cost-based"); *AT&T Corp., Petition* for Waiver of the *International Settlements Policy to Change the Accounting Rate Arrangement for Switched Voice Service with Japan,* 12 FCC Rcd 18,287, ¶ 8 (1997) *("Japan Flexibility Order")* ("The Commission's longstanding goal for international settlement rates is cost-based rates...").**

[23] *International Settlements Policy* **Reform,** IB **Docket No. 02-234, Notice** of **Proposed Rulemaking,** rel. **Oct.** 11, 2002, ¶ **44.** *See also* **Benchmarks Order,** 12 **FCC** Rcd **at** 19, 855-56, ¶ 102.

occur.[24] PLDT then asserts that the 8-cent settlement rate previously in effect suddenly is "not properly compensatory."[25] Not surprisingly, WorldCom has been unwilling to simply agree to pay higher rates without more cost-justification than the conclusory statements that PLDT needs to increase revenues because the previous rate was not properly compensatory. Every company has a need to increase its revenues, but it is inappropriate to do so through the abuse of market power in violation of U.S. law and regulation, to the detriment of U.S. carriers and consumers.

Finally, PLDT suggests that it had numerous negotiation sessions with WorldCom and that WorldCom simply refused to agree to a new termination agreement. PLDT attempts to characterize these purported negotiations, and its subsequent blocking of traffic, as typical where no agreement is reached prior to the end-date of an existing rate schedule.[26] Contrary to PLDT's assertions, its actions were anything but typical.

In fact, there were no bilateral or mutual "negotiations" to speak of. For example, in a faxed letter on December 13,2003, PLDT simply informed WorldCom that "PLDT ***will apply"*** (emphasis added) the increased rates effective February 1,2003, without characterizing its letter

[24] PLDT Opposition at 6-7. PLDT's claim that "volumes have not materially increased on the U.S.-Philippines route is surprising. According to Telegeography and the Commission's Section 43.61 Reports, traffic terminating in the Philippines from the United States increased 184 percent, from 513 million minutes to 1.627 billion minutes, between 1998 and 2001. See *Telegeography* 2000,2001,2002, and 2003. See also Section 43.61 Reports for 1998, 1999, 2000, and 2001. Moreover, PLDT has stated that its own inbound traffic from the United States increased from 433 million minutes to 1.1 billion minutes between 1999 and 2000, hardly an immaterial increase. See PLDT's SEC Form 20-F, "Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31,2000," at **29.**

[25] PLDT Opposition at 7-8

[26] *Id.* at **8**

as a proposal.[27] Similarly, in its January **9,2003,** letter PLDT simply referred to its "pending rate alignment,"[28] and finally on January 31,2003, PLDT rejected a WorldCom counterproposal by stating that the increased rates will come into effect "for all relations without exception."[29] Put simply, PLDT was never willing to truly negotiate, rather than impose, a new settlement rate. PLDT implies that it is standard to block traffic because the "operative agreements have now lapsed." This does not reflect industry practice.[30] To the contrary, WorldCom has a long, well-documented history of bilaterally and retroactively agreeing to rates with PLDT -- and every one of WorldCom's international correspondents -- after previously agreed rates were no longer "operative." In such circumstances, it is WorldCom's standard practice to continue to exchange traffic at the previously agreed rate until a new arrangement is in place, at which time payments can be adjusted retroactively.

In sum, PLDT has simply attempted to impose its settlement rate increases on WorldCom. When WorldCom continued to insist on bilateral negotiations, PLDT blocked its traffic. Such discrimination should be addressed regardless of the level of the settlement rates in question.

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[27] ***See Id,*** Exhibit **3.**

[28] ***Id,*** Exhibit 5.

[29] *Id.*, Exhibit 8.

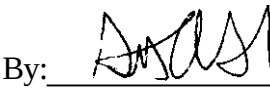
[30] ***Id.*** at 8.

IV. CONCLUSION

Neither PLDT nor any other Philippines carrier raises new issues in response to the Petitions of WorldCom and AT&T. The simple fact remains that PLDT is blocking WorldCom's traffic in retaliation for WorldCom's refusal to accept a unilateral settlement rate increase. PLDT has not blocked the traffic of most other U.S. carriers. PLDT's discriminatory action is a classic case of whipsawing. The Commission, therefore, should grant WorldCom's request that it take immediate action to order all U.S. carriers to suspend payments to PLDT until traffic is fully restored. The Commission must send a clear message that it will not permit foreign carriers with market power to whipsaw U.S. carriers.

Respectfully submitted,

WORLDCOM, INC.

By: 

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February 26,2003

CERTIFICATE OF SERVICE

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